IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5822 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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CHANDRAKANT @ LALO SON OF AMRUTLAL SONI

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India, challenging the order of detention, vide Annexure 'A' dated 10.6.1999 passed by the Commissioner of Police, Ahmedabad City under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as the PASA].

2. Annexure 'B', the grounds of detention, was served on the detenu. Reading the grounds, it appears that the detenu was considered as a bootlegger. He was found indulging in dealing in prohibited liquor. Three cases were registered against the detenu for offence punishable under the provisions contained in Bombay Prohibition Act. He was also found transporting prohibited liquor of huge amount. Incidents of 20.5.1999 and 30.5.1999 are also mentioned in the grounds of detention. Reading the grounds, it appears that the detenu, along with his associates, were creating an atmosphere of terror. They used to use weapons. People of the locality and the persons affected were not coming

forward to disclose their names as they were afraid of the detenu. In view of the nefarious activities continued by the detenu, the Commissioner of police passed an order of detention.

3. In the instant case, it is not necessary to go into the propriety or legality of the order of detention because the representation made by the petitioner has not been decided by the State Government. In ground (i), the petitioner has made the following averments:

> "The petitioner submits that the advocate of the petitioner has made a presentation dated 21.6.99 to the detaining authority by registered post A.D. on behalf of the petitioner. That the office of detaining authority has duly received the same. Annex hereto and marked as ANNEXURE 'C' to this petition is a copy of the representation dated 21.6.99.
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> It is submitted that the detaining authority has to satisfy this Hon'ble Court that the representation dtd. 21.6.99 made on behalf of the petitioner has been considered at the earliest and without any delay. In failing to do so, the continued detention of the petitioner becomes bad in law."

4. In view of the fact that there is no reply by the State Government controverting the said ground, the continued detention is required to be held as bad and illegal.

5. The detaining authority has filed an affidavit and pointed out that the representation was forwarded to the State Government immediately.

6. In number of judgments, it has been pointed out that it is the duty of the detaining authority as well as the State Government to file affidavits, placing facts before the Court justifying the detention and continued detention. Today, in another case, being Special Civil Application No. 6241 of 1999, this Court has dealt in detail about the inaction of the State in not filing replies. This Court, is, therefore, not repeating the said reasons.

7. In the case of detenu, it is required to be noted that the detenu is detained without trial and the detaining authority as well as the State Government must satisfy the Court that appropriate actions as required

under the law were taken. In the absence of affidavit, it would not be possible for the Court to say that the representation which was forwarded was decided in accordance with law. Therefore, the continued detention is required to be held as bad and illegal. The detenu is ordered to be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

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